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THE 1981 SPECIAL SESSION: A PREVIEW

The First Called Session of the 67th Legislature will convene at noon on Monday, July 13. It must adjourn by midnight, Tuesday, August 11. This report explains the procedures for a special session, and discusses the issues included in Gov. Clements' call for the session.

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CONTENTS

RULES AND PROCEDURES	1
The Governor's Call	1
Special Session Subjects	1
Bills	1
Resolutions	2
Time Limits	3
Other Rules and Procedures	4
THE 1978 SPECIAL SESSION	4
SPECIAL SESSION SUBJECTS	6
Higher Education Finance and Repeal of the State	6
Property Tax	6
A Water Trust Fund	10
Congressional Redistricting	13
Amendments to the Property Tax Code	18
The Medical Practice Act	20

RULES AND PROCEDURES

Special sessions of the Legislature are governed by most of the constitutional and legislative rules that apply to regular sessions. However, some regular rules do not apply, and some rules apply only to special sessions.

The Governor's Call

The Legislature may meet in special session only when called into session by the Governor. Article 4, Section 8, of the Constitution gives the Governor the power to call special sessions "on extraordinary occasions." The Governor's proclamation calling the session (the "call") "shall state specifically the purpose for which the Legislature is convened."

Article 3, Section 40, says that the Legislature cannot meet in special session for more than 30 days. (This means calendar days, not "legislative" days, so a session that begins on July 13 must end by August 11.) This section also says that "there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to [the Legislature] by the Governor." The Governor may expand the call to include additional topics. If the session does not produce the results desired by the Governor, he may call additional sessions. No particular amount of notice is required for special sessions, so back-to-back ones are possible.

Special Session Subjects

Bills

The Governor's call is required only to set forth the "purpose" of the session. The courts have held that the Governor need not "state the details of legislation..." (Ex parte Fulton, 215 S. W. 331). In an 1886 case, the Texas Supreme Court ruled that the "subject" of a special session called to reduce taxes was in fact "the whole subject of taxation," so that a bill raising taxes could be considered (Baldwin v. State, 3 S.W. 109).

Under current judicial practice, courts would decline to investigate whether a law passed during a special session had been properly considered by the Legislature. Under the "enrolled bill doctrine," the courts do not hear questions of whether a bill that passed both Houses and was signed by the Governor complied with the procedural rules set by the Constitution. (City of Houston v. Allred, 71 S. W. 2d 251; Maldonado v. State, 473 W. W. 2d 26).

Section 40's limitation on subject matter may be enforced in two ways. A point of order may be raised against any bill that a legislator feels is not within the scope of the call. And the Governor may veto any bill that he decides should not have been passed, for whatever reason.

According to the "Explanatory Notes" in the annotated edition of the House Rules (page 254):

In order to abide by the spirit of this section [Article 3, Section 40], it becomes imperative that a presiding officer, as well as individual legislators, strictly construe this provision. The rule should be rigidly adhered to in special sessions of the legislature, and points of order raised against bills on the ground that they do not come within the purview of the governor's call or have not been specially submitted, should be uniformly sustained, where it clearly appears that the bill is subject to objection."

The limitation on subject matter is subject to interpretation by the presiding officer of each house. In one ruling cited by the annotated rules (page 256), Speaker Waggoner Carr ruled that "it was not the intention of this section to require the Governor to define with precision as to detail the subject of legislation, but only in a general way, by his call, to confine the business to the particular subjects.... It is not necessary nor proper for the Governor to suggest in detail the legislation desired. It is for the Legislature to determine what the legislation shall be."

Carr went on to rule that amendments to a bill under consideration did not have to be weighed against the standard set by Section 40. As long as the amendment was germane to the bill, and the bill itself was within the subject of the call, the amendment would be permissible.

The annotations state that the Speaker should review all bills filed with the Chief Clerk, and admit to first reading only those that he determines are within the subjects of the call. According to the Chief Clerk's office, that practice will be followed for this session. Any bill may be filed with the Chief Clerk. But the Speaker and the Parliamentarian will review all bills prior to first reading and eliminate those not within the call.

Resolutions

House Rule 5.118 states that "the subject matter of house resolutions and concurrent resolutions does not have to be submitted by the governor in a called session before they can be considered." This rule follows an Attorney General's opinion (No. M-309 (1968)).

Until 1972, constitutional amendments could not be proposed during a special session. In that year the voters approved an amendment to Article 17, Section 1, allowing constitutional amendments to be considered "at any special session when the matter is included within the purposes for which the session is convened."

Proposed constitutional amendments may thus be considered in a special session only if they are within the Governor's call. The precedents discussed above for interpreting what is encompassed in the call apply to resolutions. But there is one significant difference. The Governor does not have the power to veto proposed constitutional amendments. (See Attorney General's Opinion M-1167

(1972), which cites an earlier opinion (To Honorable F. O. Fuller, Feb. 13, 1917).) Therefore, it is up to the Legislature to decide whether a proposed constitutional amendment is within the scope of the special session.

Two of the items in Gov. Clements' call are worded in a way that might restrict the Legislature's consideration of the subjects. The first item in the call is "Repeal of the state ad valorem tax." During the regular session, HJR 111 proposed repeal of the tax and also the creation of a new funding source to replace it. (See page 6 of this report.) If a resolution similar to HJR 111 is introduced in the special session, it will be up to the presiding officer in each house to decide if it fits within the "subject" of the call. The precedents cited above offer no clear guidance. It does seem, clear, however, that Gov. Clements intended to limit the Legislature to considering only repealing the ad valorem tax, not replacing it.

Similarly, the second item in the call is "Creation of a Texas water trust fund." HJR 33 proposed a constitutional amendment that would have authorized the refinancing of existing state bonds, raised the permitted interest rate on certain state bonds, and created a general-purpose surplus fund as well as a water trust fund. Again, it is unclear whether the subject mentioned in the call is broad enough to encompass a resolution similar to HJR 33.

Speaker Carr's precedent (cited above) for the germaneness of amendments suggests another possible complicating factor. Suppose the House is debating a joint resolution proposing only the repeal of the ad valorem tax. Would an amendment to this resolution that replaced the lost revenue with a different funding source be germane? Would it be within the limits of the Governor's call?

By Speaker Carr's precedent, the second question does not need to be answered. If an amendment is germane to a bill (and presumably the same rule applies to resolutions) that is included in the call, then the amendment may be considered.

The answer to the first question would have to be given by the Speaker. But since Speaker Clayton was the author of HJR 111, he apparently believes that the repeal of the tax and an alternate funding mechanism are "one subject," as defined in Article 3, Section 39, of the Constitution. Therefore, under the germaneness rule (Rule 4.322), the amendment would probably be ruled legitimate.

A similar line of reasoning could be applied to the water trust fund and its related topics. Whether these issues are raised in the special session, and how they are decided, of course remains to be seen.

Time Limits

Article 3, Section 39, of the Constitution sets the effective date of all laws at 90 days following the adjournment of the session at which they are enacted. This applies to special sessions as well as to regular sessions. The Legislature may override this rule by a vote of two thirds of the membership of each house.

Proposed constitutional amendments must be published in newspapers along with "a brief explanatory statement" prepared by the Secretary of State and approved by the Attorney General. The first publication must occur no later than 50 days before the election, which means by Sept. 14 this year. The Secretary of State's office says that it may have trouble preparing the explanations and arranging for timely publication if any proposed amendment is passed near the end of the special session.

The 60-day limit on the introduction of bills of course does not apply during a special session. However, the "end-of-session" rules in Section 5.017 still apply. (No bills may be considered on second reading within the last 72 hours; no bill may be considered out of its regular order within the last 48 hours; only conference committee reports and concurrence in Senate amendments may be considered within the last 24 hours.) The rule allowing a member's debating time to be extended beyond 10 minutes by majority vote will not apply after the last Wednesday of this special session (Rule 4.107).

Other Rules and Procedures

Since the 67th Legislature is still in office, the Legislature does not need to adopt new rules or housekeeping measures or establish new committees for the special session. Resolutions to amend the rules or the Housekeeping Resolution may be offered.

The Housekeeping Resolution gives each House member \$4,500 for each month during the interim and \$5,500 "for each month in which the Legislature is in session." According to the House business office, members receive the full \$5,500 only if the Legislature is in session all month. For a 30-day session starting in mid-July, members will receive about \$5,000 in July (half a month at \$4,500 and half a month at \$5,500) and another \$5,000 in August. It is possible that the House Administration Committee might decide to give the full \$5,500 in July, but then only \$4,500 in August.

Bills may be prefiled 30 days before the start of the special session.

The Comptroller is required by Article 3, Section 49a, of the Constitution to submit a supplemental revenue estimate to the Legislature prior to the start of the special session.

THE 1978 SPECIAL SESSION

Gov. Dolph Briscoe called the 65th Legislature into two special sessions. A brief session in 1977 completed work on a hotly debated school finance law, and several other measures. The 1978 session, called in the wake of California's Proposition 13, considered tax relief and other topics.

The opening day's events in 1978 were as follows:

- roll call
- invocation
- reading of the Governor's proclamation calling the session

--address by the Speaker

--resolutions notifying the Senate and the Governor that the House was in session, and inviting the Governor to address a joint session

--address by the Governor

--first reading and referral of bills and resolutions

--motions to suspend the five-day posting rule to allow public hearings to be held the next day

In 1978, all bills filed with the Chief Clerk were read and referred to committee. Some of these bills apparently dealt with subjects outside of the Governor's initial call (and subsequent proclamations broadening the call), and did not receive a hearing in committee.

SPECIAL SESSION SUBJECTS

On June 11, Gov. Clements issued his proclamation calling the special session of July 13. The Governor's proclamation included the following subjects:

- 1) Repeal of the state ad valorem tax.
- 2) Creation of a Texas water trust fund.
- 3) Congressional redistricting.
- 4) Revision of the property tax code.
- 5) Consideration of the Medical Practice Act.

Additional subjects may be added to the special session agenda by subsequent proclamations. See page 1 for a discussion of the Governor's power to control the subject matter of a special session.

The following is a discussion on the five subjects in the initial call.

Higher Education Finance and Repeal of the State Property Tax

The regular session ended with the higher education finance issue once again left unresolved. Last session, the Legislature virtually abolished the state ad valorem tax used to finance construction at 17 state-supported colleges and universities. Then the Attorney General ruled that the 17 colleges were ineligible for general revenue funds for construction as long as the ad valorem tax existed, no matter how little money it generated. The 66th Legislature had tried to resolve the problem by replacing the tax with a new fund to support college construction, but a constitutional amendment proposal to create the fund died in conference committee.

These universities have no funds for construction and the virtual elimination of the ad valorem tax has been challenged in court by Midwestern University, which contends that the Legislature illegally changed the Constitution without a vote of the people. As it stands now, the Legislature and the voters in the state must formally abolish the ad valorem tax before these schools will be eligible for general revenue funds for construction. And if Midwestern University wins its case, Texans could owe millions of dollars in back taxes.

Complicating matters further, the U.S. Department of Education ruled this year that Texas is only provisionally in compliance with federal civil rights laws prohibiting racial discrimination in federally assisted programs. The state is in danger of losing millions of dollars of federal higher education funds. Nonetheless, legislation aimed at addressing these issues failed to win passage.

All sides seemed to agree that the Permanent University Fund (PUF) should be expanded to include all University of Texas and Texas A&M System schools and that the bonding authority should be extended from 20 percent to 30 percent of the PUF assets to compensate for this added expenditure. But agreement ended there.

A major obstacle was agreeing on a funding source for the non-PUF schools. As originally introduced, HJR 111 would have financed an endowment fund for the 17 state-supported universities by reviving the ad valorem tax at a rate of three cents per \$100 of assessed valuation. Seventy percent of the revenue would be deposited in the fund each biennium and the remainder would finance construction at the 17 universities. Once the "higher education endowment fund" (HEEF) reached \$2 billion, around 1992, all property taxes would be abolished and only proceeds from the fund would be used for construction and repair needs. However, this proposal was met with considerable opposition from Governor Clements. Since no state ad valorem taxes have been collected since 1979, to enact a three cent tax would be to raise, not lower, property taxes. In addition, because of new property valuations, the new tax would raise almost four times the revenue of the previous tax. Clements believed the Legislature had an obligation to Texas citizens to repeal the tax completely.

The committee substitute for HJR 111 established four main revenue sources for the HEEF. All previously authorized state ad valorem taxes that had not been distributed by the Comptroller would be deposited in the HEEF, and revenue could be appropriated or dedicated to the fund by law. In addition, if HJR 33 passed, and the special reserve funds were created, the HEEF would receive one-half of the state surplus until the fund totaled \$2 billion. After that, this portion of the state surplus would be deposited in the special reserve fund created by HJR 33. The HEEF would also receive all interest, dividends, and other income from its investment. In 1983 and every two years thereafter, the Legislature would appropriate \$80 million from the endowment fund to the eligible institutions. The House later passed a floor amendment requiring the Legislature to appropriate \$80 million each year (instead of each biennium) from the endowment fund to the Coordinating Board. If the HEEF balance were less than \$80 million, the Legislature would appropriate the difference from the General Revenue Fund.

The House considered several revenue sources to dedicate to the HEEF by law. These sources were left flexible to allow the Legislature to fund the HEEF as it saw fit and not have the funding mechanism frozen in the Constitution where it could not be altered to fit the state's needs. The House considered a credit sales tax, an oil severance tax increase, and a tuition increase at state colleges and universities. Only the credit sales tax was enacted. (It would dedicate about \$40 million to the fund each year. If the HEEF is not established during the special session, this revenue will be deposited in the General Revenue Fund.)

Speaker Clayton and other supporters of HJR 111 also attempted to address the special needs of the state's black universities, Prairie View A&M and Texas Southern University. Prairie View would continue to participate in the PUF bond proceeds. TSU, which is not

eligible for these proceeds, would share in the proposed HEEF. But whereas all other schools would be prohibited from receiving general revenue appropriations for purposes financed by either the PUF proceeds or the HEEF, HJR 111 would exempt Prairie View and TSU from that restriction. The House passed another floor amendment guaranteeing Prairie View one-sixth of the Texas A&M's share of the PUF bond proceeds and the AUF. House supporters believed these provisions would convince the federal government that Texas was serious about eliminating prior discriminatory practices in higher education.

The Senate had a completely different vision of higher education finance. In an attempt to establish a more specific constitutional funding source for non-PUF universities, the Senate version of the resolution dedicated 25 percent of the annual income from Permanent School Fund lands to the HEEF. Any funds collected from previously authorized property taxes would go to the counties collecting the taxes instead of the HEEF, as provided in HJR 111. The Senate version contained no provisions for funds dedicated to HEEF by law, or surplus funds that could be used to finance HEEF projects. In addition, the Senate resolution contained no special provisions for Prairie View A&M or TSU. It did not guarantee Prairie View one-sixth of Texas A&M's share of the PUF bond proceeds and the AUF. Instead, the Senate resolution would allow the Legislature to appropriate funds to any PUF or HEEF participant that demonstrated need. General revenue could be appropriated for nonacademic special research facilities of particular benefit to the state.

The Conference Committee

The House refused to concur with the Senate amendments and requested a conference committee. The House appointed Reps. McFarland (chair), Delco, Rains, Presnal, and Gavin. The Senate conferees were Sens. Snelson (chair), Jones, Caperton, Vale, and Parker.

The House and Senate conferees could not agree either on a funding source for non-PUF schools or on special provisions for Prairie View and TSU. Both sides agreed to reject the proposal to finance the HEEF with revenues from the Permanent School Fund. Many public school officials and teachers feared that setting aside money intended for public schools to help colleges would endanger the state's basic education program. Sen. Snelson proposed two funding mechanisms: 1) reviving the ad valorem tax at a rate of 3 cents per \$100 valuation, or 2) appropriating \$100 million each year from the General Revenue Fund to the HEEF. House conferees rejected the move to reinstate a state property tax because of the Governor's opposition and the commitment to the citizenry last session to abolish the tax. Others said a \$100 million drain on general revenue was tantamount to mandating a personal income tax. Senate conferees could not agree to dedicating one-half of the state surplus for the same reason. They objected to relying on a major funding source that would have to pass approval by the voters. The House conferees preferred to rely on the surplus and revenues dedicated to the HEEF by law, and using money from the General Revenue Fund only as a last resort if the HEEF fell short of \$80 million.

In addition, the conferees could not agree on special provisions for Prairie View and TSU. The Senate conferees were particularly opposed to guaranteeing Prairie View one-sixth of Texas A&M's share of the PUF bond proceeds and the AUF. Sen. Caperton offered a provision to give Prairie View \$2 million from general revenue each year for the next three biennia to compensate for past discriminatory practices. Rep. Delco and other House conferees rejected this proposal on the grounds that Prairie View needed to be provided for in the future as well as in the present, and should receive its constitutional share of the PUF bond proceeds and AUF as the constitutional branch for the instruction of "colored youth." In order to reach a compromise, Rep. Delco proposed to strike the "one-sixth" share provision and substitute "an equitable proportion." This was rejected by the Senate conferees. The House and Senate never reached a compromise and HJR 111 died in conference committee.

Rep. Delco plans to reintroduce the House version of HJR 111, substituting an "equitable proportion" of the PUF bond proceeds and AUF for Prairie View instead of the guaranteed one-sixth share. If the resolution is considered, all possible funding mechanisms could be reviewed and reconsidered, including proposals for tuition increases at state universities and medical schools.

Governor Clements has not included higher education finance on the five-part special session agenda. In announcing plans for the special session, Clements said he will insist lawmakers approve a constitutional amendment to officially abolish the ad valorem tax. Such action would relieve the pressure from the Midwestern University lawsuit and eliminate the possibility of ad valorem taxes being used to fund college construction. The governor's aides say once "sufficient progress" is made on the repeal of the property tax, the governor will probably extend the call to include higher education finance. However, others say repealing the property tax should not be considered apart from the issue of funding non-PUF schools since tax revenues are dedicated to college construction. Should legislators decide to finance college construction with a three cent ad valorem tax, or other dedicated sources of funds, the governor could not veto the proposed constitutional amendment but could campaign against it. See page 1 for a discussion of the limitations on special session subjects.

If the ad valorem tax is repealed in the special session and no construction fund is established, then the 17 non-PUF schools would be eligible for general revenue appropriations for construction during the next legislative session. However, the schools would still be left without construction funding for this biennium. There is now only \$19,954,216 in the ad valorem tax fund, mainly from the collection of delinquent taxes. Because of specific funding procedures, \$16,191,345 of this amount cannot be released to the schools until June 1984. This leaves only \$3,762,871 for this biennium for all 17 non-PUF schools.

Merely repealing the ad valorem tax would also fail to address the special needs of Prairie View and TSU. State officials recently submitted a plan to the federal government to eliminate discriminatory practices in Texas higher education. It is not yet known how this plan will be received. Neither the plan nor the actions of the

Legislature this session have provided any additional state money to significantly rectify past practices and upgrade educational programs at Prairie View and TSU. The plan notes that \$77 million is needed for construction at Prairie View in the next three years and \$7.4 million is needed for immediate repairs at TSU, but does not guarantee any sources of funding these improvements. The \$96.9 million appropriation to Prairie View and TSU fell short of the \$127.8 million requested by the schools.

FOR MORE INFORMATION on this subject, please consult the following HSG reports:

Appropriations Report No. 3: Higher Education Finance
(April 28, 1981)

Bill analysis of HJR 111 (May 15, 1981)

Preliminary conference committee analysis of HJR 111
(May 31, 1981)

A Water Trust Fund

Speaker Bill Clayton's proposed constitutional amendment (HJR 33) to dedicate surplus state revenue to a water projects fund and to a special reserve fund died in the Senate on the last day of the regular session. After compromise versions of HJR 33 and its implementing legislation, HB 1569, were favorably reported by the Senate Finance Committee, further consideration of HJR 33 on the Senate floor was halted when a point of order raised by Sen. Oscar Mauzy was sustained. The sponsor of CSHJR 33, Sen. Ed Howard, had failed to list the resolution on the Senate intent calendar.

The offices of Speaker Clayton and Lt. Gov. Bill Hobby indicate that the Senate committee substitutes for HJR 33 and HB 1569, rather than the versions of those bills that were passed by the House, will be taken up during the special session. They further expect that no water-related legislation other than the Speaker's program will be considered during the special session. "I thought we'd just take up where we left off," Clayton has been quoted as saying. However, it seems likely that CSHJR 33 will be further modified in an attempt to remove certain changes that were won by Sen. Lloyd Doggett, in return for removing a "tag" that he had placed on the bill in the closing days of the session.

CSHJR 33 reflects a compromise worked out among Clayton, Hobby, and Sen. Grant Jones, chair of the Senate Finance Committee. Both the House and Senate versions would dedicate one-half of the state surplus to a special fund or funds for water development, water conservation, water quality enhancement, and flood control. Both versions would dedicate the other half of the surplus to a special reserve fund, and authorize the Legislature to provide that part or all of the fund be used to retire state bonds, i.e., to retire the remaining debt on existing programs backed by general obligation bonds of the state. Under both versions, the Legislature could transfer money from the General Revenue Fund to any of the funds created by the amendment.

However, the compromise, CSHJR 33, differs from HJR 33 as passed by the House in several significant respects. Key differences include:

--The two versions define the surplus differently. HJR 33 as passed by the House would have dedicated to the newly created funds the amount by which non-dedicated state revenue exceeds the total appropriations for a biennium. CSHJR 33, the Senate version, would dedicate the amount by which undedicated revenues exceed the spending ceiling.

(The 1978 "tax relief" amendment to the Constitution requires that appropriations from state tax revenues not dedicated by the Constitution be limited to the same growth rate as the growth of the state's economy--as measured, generally, by growth in total personal income. The Committee to Set the Biennial Spending Limitation--composed of the Governor, Lieutenant Governor, Governor, Speaker, and Comptroller--decides what the limit will be.)

Since appropriations must not exceed the spending ceiling, the surplus under the Senate version would be equal to or less than the surplus as defined in the House version. To take a hypothetical example: if the spending ceiling for a biennium was set at \$20 billion, a total of \$19.5 billion was appropriated, and revenues totaled \$20.5 billion, then the House version would dedicate \$500 million to the water fund (one-half of the difference between \$20.5 billion and \$19.5 billion), while the Senate version would dedicate \$250 million to the fund (one-half of the difference between \$20.5 billion and \$20 billion).

--Under the House version, it would take a two-thirds vote of the Legislature to limit the amount of money deposited in the water fund in a particular biennium, or to remove money from the fund (to the extent that the money had not become legally encumbered, e.g., to guarantee local bonds). Under the Senate version, the Legislature could take these actions by simple majority.

--In addition to the dedicated fund for water projects, the Senate version authorizes the Legislature to provide by law for a separate water projects bond-guaranty program. Under the program, the state could pledge its general credit to the payment of principal and interest on water-project bonds issued by local governments and other political subdivisions of the state. The state could assume liability for the payment, from general revenue, of up to \$500 million to bondholders in the event of local defaults. The House version does not authorize a pledge of state credit backed by general revenue.

--The Senate version would allow any authorized state general obligation bonds not issued as of the date this proposed amendment would take effect to be issued at interest rates of up to 15 percent. By a two-thirds vote of its membership, the Legislature could raise the interest ceiling above 15 percent. The House version specifies a 10 percent interest ceiling on state bonds. Most existing state bond programs have a 6 percent interest rate ceiling.

--The House version would have submitted the proposed amendment to the voters in November, 1981, with the ballot wording (in part): "The constitutional amendment authorizing the use of surplus funds to retire state debt, to create a reserve fund for future public needs, and to provide assistance for water resource development..." Under the compromise worked out with Sen. Doggett, the Senate version would submit the proposed amendment to the voters in 1982, with the ballot wording (in part) "The constitutional amendment authorizing the use of excess funds and the use of \$500,000,000 of the credit of the state to provide assistance for water resource development..." The Speaker's office indicates that an effort may be made to reinstate the 1981 election date. The Lieutenant Governor's office indicates that an effort may be made to change the wording, "the use of \$500,000,000 of the credit of the state," to something like, "the limited use of the credit of the state."

CSHB 1569, the Senate committee version of the enabling legislation for HJR 33, also differs from HB 1569 as passed by the House. Both bills would create a Water Development Assistance Fund, administered by the Texas Water Development Board, to be used as a holding fund for excess revenues dedicated to water projects. Both would create a Water Bond Guaranty Fund, into which money from the holding fund could be channeled for use in guaranteeing locally issued water bonds. The Water Bond Guaranty Fund could be leveraged at ten-to-one, i.e., it could be used to guarantee an aggregate amount of bonds up to ten times the amount of money in the fund. Differences between the Senate and House versions include:

--The Senate version specifies that the Legislature may, in the General Appropriations Act, set a maximum amount that the water development board may transfer from the holding fund to the Water Bond Guaranty Fund in a particular biennium.

--The Senate version deletes two additional funds created by the House version: a Water Loan Assistance Fund, to be used to buy local bonds or obligations and to pay interest on them, and a Storage Acquisition Fund, to be used to acquire, construct, enlarge, or develop water storage projects, or to pay principal or interest on bonds. Supporters of this version contend that the water development board already has these programs under existing state water development bond programs.

--The Senate version would not allow programs created by CSHB 1569 to be used to aid private water supply and sewer service corporations.

--The Senate version would create a Special Water Bond Guaranty Program, administered by the Texas Water Development Board, to be used to guarantee to holders of local bonds that, in the event of default, the state will pay. This fund which could be used to pledge state credit up to \$500 million, could be leveraged at two-to-one. CSHB 1569 does not specify guidelines regarding the amount of state credit that could be pledged in any given biennium. It is likely that such guidelines will be proposed.

During the regular session, no enabling legislation was introduced regarding the one-half of the state surplus that could, under the proposed amendment, be dedicated to a fund to retire state bonds. It appears that none will be introduced in the special session, either.

Amendments to HJR 33 may be proposed to:

- specify stricter legislative guidelines regarding the water development board's use of the water funds;

- specify stricter ceilings on the amounts of money that would go into the dedicated fund;

- delete the authorization of a bond guaranty program that could pledge general revenue as state credit;

- delete the provision for dedicating one-half of the state surplus to a special reserve fund, and authorization for using money from the fund to retire state bonds; and

- place any language specifying the extent to which the funds could be leveraged in the proposed constitutional amendment, rather than only in the enabling legislation.

See page 3 of this report for a discussion of how the wording of the Governor's special session call might affect consideration of this subject.

FOR MORE INFORMATION on this subject, consult the following HSG reports:

- Appropriations Report No. 2: Water Use, Public Finance, and HJR 33 (April 15, 1981)
- Bill analysis of HJR 33 (April 16, 1981)
- Bill analysis of HB 1569 (May 8, 1981)

Congressional Redistricting

Congressional redistricting will likely affect the political climate surrounding all other issues in the special session. More than any other question considered by the Legislature in recent years, Congressional redistricting has highlighted partisan differences. Since the race for the Speakership may heat up during the course of the special session, those new partisan divisions might affect that contest as well.

The Conference Committee

The congressional redistricting conference committee on HB 1400 met for the first time on May 29. The House conferees were Reps. Tim Von Dohlen (chair), Hugo Berlanga, Bob Davis, Bill Messer, and Craig Washington. The Senate conferees were Sens. Jack Ogg (chair), Ike Harris, Peyton McKnight, Oscar Mauzy, and Tati Santiesteban. Although the conferees delineated their differences in several areas, such as whether the Houston Ship Channel should be used as a natural

boundary between Districts 8 and 22, and in which district Cooke County should be located, the most crucial sticking points concerned two areas--Dallas and South Texas (Nueces County). Generally, the House seemed to prefer plans leading to an increase in minority representatives while the Senate preferred having more representatives that minorities could influence, even if the representatives themselves were not minority-group members.

Dallas County

The Dallas dispute involved creation of a minority-dominated congressional district. Three of the five House conferees and Gov. Bill Clements felt that if a "majority minority" district could be created in Dallas, as it could in Houston, the Legislature was obligated to create it. The position of all but one of the Senate conferees and the two minority House conferees was that given the political realities of Dallas, grouping enough minority voters into one district to elect a minority representative would effectively elect Republicans in the remainder of the Dallas districts. They contended that having two white moderate-liberal Democratic representatives (currently Martin Frost and Jim Mattox), from districts in which minority support is crucial to their reelection, is preferable to having one black representative but no minority influence on the other members of the Dallas congressional delegation.

The ethnic makeup of Dallas County shown in the 1980 census was 287,613 blacks (18.5 percent) and 154,560 Hispanics (9.9 percent) out of a total population of 1,556,549. The current District 24 (Martin Frost) includes 49 percent of the blacks in Dallas County (blacks comprise 25.5 percent of the district) and 42 percent of the county's Hispanics (who comprise 11.9 percent of the district). The new District 24 in the House plan would have included 80 percent of Dallas blacks (43.6 percent of the district) and 55 percent of Dallas Hispanics (16 percent of the district). The Senate's version of District 24 would have included 61 percent of Dallas blacks (33.3 percent of the district) and 46 percent of Dallas Hispanics (13.5 percent of the district).

The current District 5 (Jim Mattox) includes 32.5 percent of the blacks in Dallas County (18.3 percent of the district) and 35.5 percent of Dallas Hispanics (10.8 percent of the district). The new District 5 in the House plan would have included 10.6 percent of Dallas County blacks (plus blacks in Collin and Denton counties, for a total of 7.0 percent black in the district) and 10.5 percent of the county's Hispanics (plus Hispanics in Collin and Denton counties, for a total of 7.1 percent Hispanic in the district). The Senate's version of District 5 was located totally within Dallas County and would have included 32.8 percent of Dallas County blacks (17.9 percent of the district) and 39.6 percent of the county's Hispanics (11.6 percent of the district).

South Texas

The South Texas controversy centered on the number of districts that could be dominated by Hispanic population and the number in which Hispanics could have influence even though not a voting majority. Also involved was how best to represent the coastal area below Galveston.

Although the House and Senate conferees agreed on a Valley district with over 80 percent Hispanic population (District 15--de la Garza), the sticking point was Nueces County. The original House plan would have divided Nueces County along ethnic lines, with the predominantly Hispanic portion forming the eastern edge of a Hispanic district (District 23--Kazen) and with the predominantly Anglo portion as the southern end of a coastal district (District 14, although omitting incumbent Rep. Bill Patman's home county). The Senate plan would have kept all of Nueces County in a coastal district running north and kept Patman in his present district. Hispanic groups proposed a third alternative, placing Nueces County in a new district along the southern coast that would include most of the excess north of the Valley from the currently overpopulated District 15.

The principal difference between the House and Senate plans for South Texas was much the same as the one in Dallas. The House preferred to create four districts in which Hispanics would have a clear majority of over 60 percent. The Senate opted for three districts with over 60 percent Hispanic population but with two more district with over 40 percent Hispanics, thus creating five districts with significant Hispanic influence. Hispanic groups maintained that five districts could be created with a clear Hispanic majority.

The Last Day

Both the House and the Senate conferees made compromise proposals in the waning hours of the session on Monday, June 1. While both sides offered significant changes in their original proposals, neither proposal could get the majority support of the conferees.

The House compromise proposal included three districts that were over 60 percent Hispanic and two districts at least 50 percent Hispanic. Nueces County would still have been split, Reps. Patman and Paul would have been paired, and the Dallas proposal would still have created a minority-dominated district. The vote on the House proposal was For--House: Von Dohlen, Davis, Messer; Senate: Ogg, Harris. Against--House: Berlanga, Washington; Senate: McKnight, Mauzy, Santiesteban.

The modified Senate proposal would have created five Hispanic-dominated districts and still would have divided Dallas minorities into two districts. District 14 (Patman) would have lost Nueces County to a new South Texas district and have been converted to a district stretching from western Bexar and Williamson counties south of the Brazos to the coast. The vote on the Senate proposals was For--House: Berlanga, Washington; Senate: Ogg, McKnight, Mauzy, Santiesteban. Against--House: Von Dohlen, Davis, Messer; Senate: Harris.

While some movement toward possible accomodation was evident in the two compromise proposals concerning South Texas and other areas, the Dallas issue remained as intractable as ever. Moreover, Governor Clements has indicated that he will likely veto any plan that does not create a minority district in Dallas.

What Happens if the Stalemate Continues

If the two houses still cannot agree on a redistricting plan by the end of the 30-day special session, the Governor can call a second special session if he chooses. If both houses agree upon a Congressional redistricting plan early in the special session (within the first 20 days) and the Governor vetoes the bill, the Legislature could override the veto by a two-thirds vote of each house. During a session, the Governor must veto a bill within ten days or the bill automatically becomes law. Thus, if the Legislature passes a redistricting bill in the last ten days of the special session, the Governor can wait until the session ends, veto the bill within 20 days after the end of the session, and call the Legislature back into special session without giving it an opportunity to override his veto.

If agreement on a plan is impossible, the state cannot simply wait until the next regular session to redistrict by keeping the old districts and electing the three new districts at-large in 1982. A 1967 federal statute (2 U.S.C.A. Section 2c) requires single-member congressional districts, and the long series of one-person, one-vote cases beginning with Baker v. Carr and Wesberry v. Sanders would not allow election from unequal congressional districts following a new census.

It is possible that all sides in the congressional redistricting controversy may give up without passing a plan, due to a hopeless deadlock. According to Congressional Quarterly, after the 1970 census seven states--California, Connecticut, Illinois, Michigan, Missouri, New Jersey, and Washington--reached an impasse on congressional redistricting, resulting in lawsuits that required courts to draw the new district lines. In four of the seven states, the courts adopted plans similar to ones that had been passed by one or both houses of the state legislature. In the other three states, special masters or a judge drew plans without regard to prior legislative proposals.

Even if the Legislature and the Governor agree on a congressional redistricting plan, the courts could draw the new district lines anyway if the plan were successfully challenged before the Justice Department or the courts. Candidates must file for office by Feb. 2, 1982 and the Justice Department has a 60-day pre-clearance review period lodge any objection under the Voting Rights Act. The review period begins whenever the Justice Department believes that it has enough data to evaluate a plan after it has been submitted by the Secretary of State. Thus, the midnight, August 11 end of the special session may provide just enough time for review and approval of a Congressional plan in order that the election process may not be substantially disrupted.

FOR MORE INFORMATION on congressional redistricting, consult the following:

Bill Analysis of HB 1400 (May 18, 1981)

Preliminary Report on the Conference Committee on HB 1400
(May 26, 1981)

House Study Group Special Reports on Redistricting:

Part One (No. 37) A Preview of 1981 (Revised) (June 9, 1980)

Part Two (No. 49) The 1980 Census (Oct. 3, 1979)

Part Three (No. 58) Rules for Redistricting (May 8, 1980)

Part Four (No. 60) The Voting Rights Act (Oct. 15, 1980)

Part Five (No. 71) The Computers and the Process (April 8, 1981)

Amendments to the Property Tax Code

The 66th Legislature passed SB 621, which enacted the Property Tax Code. The code made many substantive changes in the state's property tax laws, and also recodified existing law. The major substantive changes included the following:

- creation of an appraisal district in each county, to appraise property for every taxing unit in the county, except for the county itself
- allowing voters to petition to hold an election to roll back proposed property tax increases
- abolition of the use of fractional assessment ratios
- creation of the State Property Tax Board, with varied duties relating to property taxation
- virtual abolition of the state property tax

Most provisions of SB 621 do not take effect until Jan. 1, 1982. However, the bill banned assessment ratios as of Jan. 1, 1981. Also, it allowed appraisal districts to begin operations in 1980, so they could start work on the 1982 tax rolls.

The 66th Legislature also approved HJR 98, a proposed constitutional amendment to require each piece of property to be appraised only once for all property taxes. The resolution, Amendment No. 3 on the November, 1980 ballot, was approved by the voters.

Meanwhile, SB 621 allowed counties to voluntarily join their appraisal districts. By September, 1980, 215 of the state's 254 counties has joined their appraisal districts.

To implement HJR 98, the Legislature must pass a law mandating a single appraisal of each piece of property.

On May 13, the House voted to table Rep. Nabers' HB 602, which would have repealed the Property Tax Code and re-enacted most of the previous property tax laws. The House then passed, after much debate and many amendments, Rep. Peveto's "clean-up" bill, HB 1465.

Peveto's bill would have implemented HJR 98 by requiring all appraisal work, including that for county taxes, to be done by the new appraisal districts. It also would have made many substantive changes in the code.

The House considered numerous floor amendments to HB 1465, adopting some and rejecting others. Among the amendments that were adopted were the following:

- a requirement that members of the board of appraisal districts be elected officials of a local government unit
- a tax exemption for "implements of husbandry"

- a reduction in the turnout requirement for property tax rollback elections
- a delay of reappraisals, by option of the appraisal district, until 1983 or 1984
- a limit on the amount any individual piece of property could be reappraised in any year.

The Senate sponsor of the bill, Grant Jones, offered a substitute to HB 1465 in Senate committee. The substitute removed many of the House floor amendments, restored to the bill some of the features that had been removed from the original version by the House Ways and Means Committee, and added additional amendments. When the bill came to the Senate floor, still more amendments were added.

The House refused to concur in Senate amendments. The conference committee was made up of Reps. Peveto, Nabers, Schlueter, Davis, and Polk; and Sens. Jones, Traeger, Caperton, Brooks, and Farabee. The conference committee, unable to agree on a number of key issues, did not issue a report.

The disagreements revolved around these points:

- the Senate conferees favored a Senate provision changing the procedure used to calculate the productivity value of farmland; a majority of the House conferees opposed the change.
- the Senate conferees preferred to retain the requirement of 25 percent turnout in tax rollback elections; the House conferees were unwilling to go above 17 percent.
- no agreement could be reached on the issue of elected officials being required to serve on appraisal district boards.
- the exemption for "implements of husbandry" received considerable discussion, and an agreement was apparently reached to accept it.

A number of possibilities exist for consideration of this subject during the special session. A separate bill may be offered that merely implements the requirement of HJR 98 for a single appraisal of all property. The purpose of this would be to remove this issue, which must be resolved immediately, from the controversy over changes in the code. However, those members who are unhappy with the entire code may oppose this approach.

Farm groups and school district officials, who disagreed on many proposed amendments during the regular session, may offer some of the same amendments, as well as new ones, during the special session.

An attempt may be made to start in the House with the version of the bill passed by the Senate, modified by the changes the conference committee was able to agree on. However, some of the agreements reached by the conference committee may have to be reworked, as some participants interject new issues into the discussion.

FOR MORE INFORMATION on this subject, consult the following HSG reports:

Special Report No. 61: Property Taxes (Nov. 7, 1980)
Bill Analysis of HB 602 (May 13, 1981)
Bill Analysis of HB 1465 (May 13, 1981)

The Medical Practice Act

As introduced, SB 315 would have continued the Texas State Board of Medical Examiners as the licensing, examining, and governing body for medical doctors and doctors of osteopathy in Texas, and would have recodified numerous sections of existing statutes under a single act. New provisions contained in the original bill included: 1) authorizing the board to determine whether a medical act could be safely delegated by a physician, through standing orders, to a non-physician, and specifying certain acts of delegation; 2) allowing the board to regulate delegation of a physician's authority to a physician assistant; 3) making communication between a patient and doctor a privileged relationship; 4) adding three public members to the board; and 5) allowing the board to discipline doctors who consistently overcharged their patients.

The Senate committee substitute for SB 315 would have exempted osteopaths from regulation under the Medical Practice Act, presuming the creation of a separate Board of Osteopathic Examiners. The committee added language saying board rules should allow individual physicians to exercise professional judgment about what acts may be safely delegated to a non-physician, and specified that qualified public health personnel could administer drugs, under standing orders, for the treatment of communicable diseases. The committee substitute exempted psychologists, psychotherapists, and physical therapists practicing under applicable laws from regulation by the Medical Practice Act, and reduced the classification of practicing medicine in violation of the act from a third degree felony for first offense and a second degree felony for subsequent offenses to a Class A misdemeanor for a first offense and a third degree felony for subsequent offenses. The committee added a section prohibiting the board from restricting competitive bidding and advertising, created a physician assistant advisory committee, and expanded and clarified the section on patient-doctor communications, specifying conditions under which privileged information could be disclosed. Finally, the Senate committee said the act could not be construed as prohibiting an unlicensed person from giving nutritional advice.

The Senate added an amendment by Sen. Traeger saying the act could not be construed as discouraging persons from seeking advice on self-care, and an amendment by Sen. Glasgow removing the section on competitive bidding and advertising. Amendments by Sen. Doggett to make all funds collected by the board subject to legislative appropriation and to broaden physicians' authority to delegate medical acts to qualified non-physicians were tabled. The Senate passed CSSB 315 April 28.

The House Committee substitute brought osteopaths back under the Medical Practice Act by specifying that three of the board's 12 doctors must be osteopaths, that both osteopaths and public members must be represented on board committees, and that discrimination based on academic medical degree, school, or system of medical practice would be prohibited. This amendment was aimed at preventing discriminatory assignment of residencies and hospital staff positions. The committee amended the bill to allow optometrists to use diagnostic drugs necessary to the practice of optometry, as defined by law. The committee also added a section allowing a patient to receive his or her medical records from a physician. The committee further refined the section on disclosure of privileged information, and removed a Senate provision that made a physician who disclosed confidential information without a patient's consent or a subpoena liable for civil damages, including punitive damages. The House committee version would have allowed appropriate standing committees of both houses to block board rules. The House passed the committee substitute without amendments May 29.

On May 30, the Senate refused to concur with House amendments and appointed a conference committee composed of Wilson (chair), Brooks, Andujar, Parker, and Brown. House conferees were Messer (chair), Clayton, Wilson, Coleman, and Evans.

The conference committee reached agreement on all but two issues: optometrists' use of diagnostic drugs, and the osteopaths' non-discrimination provision. A majority of Senate conferees favored deleting these amendments, and a majority of House conferees favored retaining them.

Supporters of the optometry amendment maintained that optometrists are qualified to administer certain drugs in a limited capacity, and that their practice should not be confined by an unnecessarily restrictive medical practice act. Opponents of this amendment argued that optometrists lack the training to deal with allergic reactions certain patients might have to the drugs.

Supporters of the non-discrimination provision argued that osteopaths need to be protected from discriminatory assignment of hospital staff positions and residencies. Opponents argued that the amendment was not germane to the bill, since the board's function is to regulate individual physicians, not hospital hiring practices. Opponents further claimed the amendment would provide the legal basis for suits against hospitals that refused a position to an unqualified applicant if the applicant were an osteopath.

FOR MORE INFORMATION on this subject, consult the following HSG reports on SB 315:

Bill Analysis: Supplement to the Daily Floor Report of May 29.
Preliminary Conference Committee Analysis: May 31, 1981.